IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No.531 of 2006

Date of decision:6-12-2006

Smt. Hima Devi ..... Appellant.

Versus

Prem Chand and others. ..... Respondents.

Coram

The Hon'ble Mr. Justice V.K.Ahuja, J.

The Hon'ble Mr. Justice

Whether approved for reporting[1]*?*

For the appellant: Mr. G.R.Palsra, Advocate.

For the respondent: Mr.respondent.

V.K.Ahuja, J.

This is an appeal filed by the appellant against the judgment and decree of the Court of learned Presiding Officer, Fast Track Court, Mandi, dated 12.9.2006, vide which the decree passed by the Court of Civil Judge (Jr. Dn. No.1), Mandi dated 20.7.2004, in a suit for declaration and injunction dismissing the suit of the plaintiff, was up-held.

Briefly stated, the facts of the case are that the appellant as plaintiff, filed a suit for declaration and injunction challenging the execution of the Sale Deed by Defendant No.2, her husband and General Power of Attorney in favour of defendant No.1 for land measuring 0-2 Bighas.

The main plank of the plea put up by the plaintiff was that she was an illiterate lady and she had orally agreed to execute the Sale

[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

Deed in favour of Defendant No.1 for land measuring 0-2 Bigha but the Sale Deed was wrongly got executed through defendant No.2 her husband and General Power of Attorney for land measuring 0-7-0 Bigha. Defendant took up the plea that the Sale Deed was validly executed by the Attorney of the plaintiff.

Both the parties led evidence. Plaintiff examined herself and the Field Kanungo of the area who had prepared the Tatima at the spot and demarcated the land. She also examined another witness Labh Singh to prove her possession over the part of the land.

Defendant examined himself as well as the marginal witnesses of the Sale Deed, namely, DW-1/2 Narinder Kumar, DW-1/3 Shri Dina Nath, Advocate as an identifier and stated that the contents of the Sale Deed were read over and explained to the parties.

Both the Courts below have discussed the evidence led by both the parties and have concluded that neither the particulars of any fraud were alleged in the plaint nor these were proved in evidence. The only plea, upon which the plaintiff based her claim, was that she was an illiterate lady but the Sale Deed in question was executed by her husband as her General Power of Attorney and she never challenged the appointment of her husband as her General Power of Attorney. The oral as well as documentary evidence was discussed by both the Courts below and they have come to the conclusion that the particulars of fraud were not there and it was not proved on record that any fraud was committed by the defendant on the plaintiff while executing the Sale Deed in question. The findings recorded by both the Courts below dismissing the suit of the plaintiff-appellant call for no interference by this Court as no substantial question of law is involved since the evidence was properly read and discussed by both the

Courts below. There is no merit in this appeal, which is accordingly dismissed.]

CMP No.950 of 2006

In view of the dismissal of the main appeal, this application also stands dismissed.

6th December, 2006 (V.K.Ahuja), J.
(SDS)